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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,211	02/22/2002	Yeok Sing Sio	KL0433US (#90232)	1358

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/069,211

Applicant(s)

Sio

Examiner

Estremsky

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amdt filed 6/13/03.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Opening Remarks***

1. Applicant's Remarks are noted as regards request for setting a new time period for Response to the previous Office Action. MPEP 710.06 indicates that when (as now) an error or defect in an Office action is called to the attention of the Office after the expiration of the period for reply, the period will not be restarted and any appropriate extension fee will be required to render a reply timely. Inasmuch as a fee for a one month extension has been received, current Reply is now made timely but the period for reply is not restarted and remains as set forth in the previous Office Action.

This Office Action is not a replacement for the first Office Action but is in response to the pending claims, as amended by Paper No. 1 ½ (filed 2/22/02) and again by Paper No. 7 (filed 6/13/03).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Steup '783 teaches Applicant's claim limitations including : "first" - including 47, and "second catch member" - including 37. The catch members of the reference are disclosed to be made of plastic where due to their geometry, they are inherently flexible. Further functional recitation does not define any structure that can be relied upon to patentably define from the structure of prior art. See MPEP 2114. That functional recitation is interpreted is a broadly-stated capability and does not define from the reference where one of ordinary skill in the art would recognize that inherent capability of the prior art structure which is inherently capable of remaining locked during at least very small flexion.

As regards claim 2, either of the catch members is *capable* of permanent deformation as a result of inherent characteristics of the material from which they are made. Present limitation does not require the reference illustrate deformed structures since deformed structures are not claimed. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Similarly, with respect to claim 9, the structure of the reference is inherently capable of flexing large angular amounts whether or not it is disclosed as part of normal operation. Again, 'capable of,...' recitations are generally broad limitations since no particular structure is actually specified.

Claim 12 is broad where it does not require a plurality of the first catches, and a plurality of the second catches.

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4. Claims 1, 2, 3, 6-15, 17-20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,641,186 to Ross.

Ross '186 teaches Applicant's claim limitations including : "first and "second catch members" - including 60,60 having structure which reads on the claim limitations.

As regards claims 2 and 9, as above, *capable* limitations are generally broad since no particular structure is actually defined.

As regards claim 10, the attachment portion of each member 60 defines a rather box-like base for the "L" shape.

5. Claims 1, 2, 6, 8, 9, 12, 14, 15, 17-21, 23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 2,873,880 to Poulos.

Poulos '880 teaches Applicant's claim limitations including : "first" - including 5, and "second catch member" - including 7. The catch members of the reference are disclosed to be made of metal where due to their geometry, they are inherently flexible.

As regards claims 21 and 23, although the lid is "hinged", the edge of the lid or 'door' inherently slides along the lip of the container as it is closed as would be recognized by one of ordinary skill in the art. As used, limitation of "sliding" is broad and does not necessarily exclude a general pivoting or rotating movement.

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Pat. No. 2,873,880 to Poulos.

Although Poulos '880 does not explicitly indicate the Young's modulus of the component parts, it would have been an obvious design choice for one of ordinary skill in the art at the time of the invention to form from steel which inherently has a Young's modulus meeting the claims' limitations. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, manufacture from steel would not otherwise affect function of the disclosed device whereby one of ordinary skill in the art would have more than a reasonable expectation of success.

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***Response to Arguments***

8. Applicant's arguments filed 6/13/03 are persuasive as regards correction of issues noted in the rejections made under 35 USC 112, second paragraph in previous Office Action but are not persuasive as regards overcoming prior art rejections.

In keeping with Office policy of compact prosecution, intended to best serve the public through prompt disclosure, a supplemental replacement Office action does not appear to be appropriate.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Submission of any response by facsimile transmission is encouraged. Group 3677's relevant facsimile numbers are :

- 703-872-9326, for formal communications for entry **before Final** action: or

- 703-872-9327, for formal communications for entry **after Final** action.

Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly within our examining group and will eliminate Post Office processing and delivery time and will bypass the PTO's mail room processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a Deposit Account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) \_\_\_\_ - \_\_\_\_ ) on \_\_\_\_\_  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

\_\_\_\_\_

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.



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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is (703) 308 - 0494. The examiner can normally be reached on M - Th from 730 am to 600 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann, can be reached on (703) 306-4115.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

- Technology Center 3600 Customer Service is available at 703-308-1113.

- General Customer Service numbers are at 800-786-9199 or 703-308-9000.

GWE

September 4, 2003



GARY ESTREMSKY  
PRIMARY EXAMINER